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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,817

07/29/2005

Daniel Peyrat

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EXAMINER

KELLY, YOLANDA LYNNETTE

ART UNIT

PAPER NUMBER

4174

MAIL DATE

DELIVERY MODE

01/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/517,817	Applicant(s) PEYRAT, DANIEL	
	Examiner Y. LYNNETTE KELLY	Art Unit 4174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/14/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fournet et al. U.S. 4,251,549.

In regard to claims 1, 2, 4, 8 and 11, Fournet discloses a filled pastry and the process of making the same. The pastry dough is first prepared from conventional dough ingredients. Example 1. The pastry dough is partially baked between a mold and a perforated counter mold for about 12 minutes at 160 °C to 190 °C. Column 3, lines 7-65. A filling for a tart, quiche, pie or pizza is separately cooked and deposited on the baked pastry dough. Column 2, lines 26-29; Column 4, lines 1-4. The filled pastry is then deep frozen and packaged. Column 4, lines 1-4; Column 5, lines 17-19.

In regard to claims 3, 10 and 12, Fournet teaches that the pastry is baked for 12 minutes at 160 °C to 190 °C. Column 3, lines 63-65. Applicants state that part-baking may take place at a temperature of 180 °C to 210 °C for a period of about 20 minutes. Specification, Page 7, Lines 6-12. Therefore, Fournet's baking process is squarely

within the claimed range to yield a part-baking of 30% to 70% of the total normal baking time of a pie base.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fournet et al., as applied to claim 1 above, in view Alden et al. 5,894,028.

As stated above, Fournet discloses a filled pastry and the process of making the same. Column 5, lines 17-19. Fournet teaches that the filled part-baked pastry is deep frozen then packaged; however, Fournet does not specifically teach that the filling is molded and deep frozen before being deposited on the part-baked pastry or that the filled frozen part-baked pastry may include an added garnish before baking to finish.

Alden discloses a pizza sauce disk. The pizza sauce filling disk is frozen when applied to a pizza crust to form a pizza. Column 7, lines 43-59; Column 8, lines 58-62. The sauce disk may be applied to fresh pizza dough or prefabricated pizza crust. Column 8, lines 58-62. The pizza crust containing the sauce disk may also include additional toppings or the toppings may be added to the frozen crust and sauce prior to final baking. Column 9, lines 15-28.

It would have been obvious for a person of ordinary skill in the art at the time this invention was made to have created a filled pastry through use of Fournet's part-baked crust in conjunction with Alden's frozen filling disk. Since the bakery art is an art form practiced in private kitchens where chef's experiment with differing ingredients, compositions, baking times and variations, it would have also been obvious for a person of ordinary skill in the art at the time this invention was made to vary the deep freeze configuration of the various parts in order to achieve the desired finished baked good. Furthermore, in order to achieve desired results corresponding with taste, the addition of ingredients as garnishes prior to the final baking process of frozen foods is a well-known practice within the baking art.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y. LYNNETTE KELLY whose telephone number is (571)270-3472. The examiner can normally be reached on Monday - Friday EST (First Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gwendolyn Blackwell/
Primary Examiner, Art Unit 1794

Y. Lynnette Kelly
Examiner
Art Unit 4174

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Examiner, Art Unit 4174